Superior Court of Justice

Ontario

How to Make Small Claims Court Work for You

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1. What is Small Claims Court for?

Small Claims Court is designed to give you a simple and inexpensive way to settle disputes concerning money or property.

Small Claims Court has limits on the size of claim — that is, how much money you can claim in damages or compensation in this court. These monetary limits change from time to time. If you aren't sure whether your claim is within these limits, please contact the nearest Small Claims Court office for this information.

Although Small Claims Court is a branch of the Superior Court of Justice, its proceedings are much simpler, are less expensive and take less time than those in other Superior Court of Justice cases. In most cases, people can and do represent themselves before the Small Claims Court judge. If your problem is complex, though, or if you don't feel comfortable speaking for yourself, you have every right to bring a lawyer, law student or agent to help you.

This booklet is an overview of Small Claims Court. Throughout the booklet, you will see words in brackets ( ). These are terms you will hear and use as you proceed with a claim. We explain what all of these important terms mean at the back of the booklet. Understanding them will help you feel comfortable and confident as you prepare to go to court.

After reading this booklet, if you still have any questions, please attend at the Small Claims Court nearest you. If you are uncertain of the court location in your area check in the Blue Pages of your phone book, in the Ontario Government section under the Ministry of the Attorney General. If court staff are unable to answer your question or if the question requires a legal opinion, they will direct you to discuss your question(s) with a solicitor or agent. Keep in mind that court staff cannot provide you with legal advice.

2. What kinds of claims are dealt with in Small Claims Court?

A claim for money owed to you

In a claim of this kind, the amount of money owed to you (the plaintiff) will usually arise from a written contract or oral agreement between you and the other party.

Examples of this kind of claim include:

- a loan that has not been repaid;
- money owed for merchandise;
- money owed because of an N.S.F. cheque;
- failure to pay rent;
- failure to pay for work done or for the services of a contractor such as a plumber, electrician or carpenter.

A claim for money losses caused by improper actions of another person (damages)

The person making such a claim (the plaintiff) must prove to the judge that a loss they have suffered was caused by the actions of another person (the defendant).

Examples of this kind of claim include:

- property damage caused by faulty service, such as damaging goods during transportation or delivery, or clothing damaged during dry cleaning;
- the delivery of goods or services that aren't up to the standard or quality agreed on by the seller and the buyer;
- failure to fulfill the terms of a written or oral contract;
- damage to property caused by someone else's fault or negligence;
- damages due to personal injury.

A claim for the return of your personal property now in the possession of another person

The person bringing this kind of claim to court (the plaintiff) has to prove to the judge that property now in the possession of another person does rightfully belong to the plaintiff and how much it is worth.

A claim for property damage under the *Parental Responsibility Act, 2000*

The *Parental Responsibility Act, 2000* deals with claims for damages against a parent of a child (under 18 years of age) who intentionally takes, damages or destroys property.

The person bringing this kind of claim to court (the plaintiff) must prove that the property damage suffered was caused by a child, that the defendant is the child's parent and the amount of the loss suffered.

The Act provides that the parent (the defendant) is liable for the damages, unless the parent can prove that the child's activity which caused the loss was NOT intentional; OR that the parent exercised reasonable supervision over the child and made reasonable efforts to prevent or discourage the child from engaging in the kind of activity that resulted in the loss or damage.

Additional information regarding a claim under the *Parental Responsibility Act, 2000* is set out in the following sections of this guidebook:

- What help is available to me to sue in Small Claims Court?
- What evidence do I need to support my case?
- Where can I get more information?
- What terms and definitions should I know?

Sections 2 – 4

3. What laws protect you as a consumer?

There are a number of important pieces of legislation in Ontario that set out the rules of business conduct for buyers and sellers and give consumers the right to compensation when the rules are broken. The legislation that protects consumers includes the *Sale of Goods Act*, the *Consumer Protection Act* and the *Business Practices Act*. These laws also give customers the right to have their money returned if a business has not dealt with them properly or if the business has broken the law.

If you want more information about the laws that protect consumers, you can contact the Ministry of Government Services. It is listed in the Blue Pages of your telephone book under Government of Ontario. General Inquiries telephone number: (416) 326-8555 or 1(800) 268-1142.

4. What help is available to me to sue in Small Claims Court?

English and French are the official languages of the courts. How does this affect me?

A plaintiff or defendant who speaks French has the right to file documents in French and to present evidence and submissions to the court in French before a judge who speaks French. This right can be exercised by:

- filing a claim or defence in French;
- filing a written request for a French hearing in the court office before the clerk has sent out the notice of trial;
- making an oral request for a French hearing at a court appearance.

If you require translation of a court document into English or French, the court will provide this service.

Once a clerk has sent out a notice of trial, a plaintiff or defendant wanting to file a request for a bilingual hearing must first obtain a judge's order.

In every Small Claims Court there are self-help guides to assist you in conducting your case. The guides briefly explain some of the processes you will need to know and how to fill out the following forms:

PLAINTIFF'S CLAIM
AFFIDAVIT OF SERVICE
AFFIDAVIT ESTABLISHING PROPER FORUM
NOTICE OF DEFAULT JUDGMENT
DEFENCE
DEFENDANT'S CLAIM
NOTICE OF MOTION
AFFIDAVIT (IN SUPPORT OF MOTION)
CERTIFICATE OF JUDGMENT
NOTICE OF EXAMINATION
AFFIDAVIT FOR EXAMINATION
WRIT OF SEIZURE AND SALE OF LANDS
WRIT OF SEIZURE AND SALE OF PERSONAL PROPERTY
NOTICE OF GARNISHMENT
AFFIDAVIT FOR GARNISHMENT
SUMMONS TO WITNESS

Making copies of the required forms is your responsibility. Court offices will charge a fee to make copies.

The staff cannot provide you with any legal advice. They also cannot fill out forms for you.

The judge who sits in the Small Claims Court is responsible for hearing disputes between the parties. The judge listens to the arguments and evidence presented by both sides and then makes a decision on the claim. Judges also conduct hearings before and after the trial, known as motions, pre-trials and judgment debtor examinations. What happens at these hearings will be explained later in this booklet.

Pre-trial hearings can bring both sides of a lawsuit together to assist them in trial preparation and to see if a trial can be avoided.

5. How do I file a claim?

Where do I go?

There are Small Claims Courts in different locations across Ontario. You must file your claim in the office in the area where one of these conditions applies:

- where the problem occurred (the location of the cause of action);
- where the party against whom the claim is filed (the defendant) lives or carries on business;
- the court's place of sitting (courtroom) nearest to where the defendant lives or carries on business.

How much time do I have to file a claim?

Specific kinds of claims have to be filed within a certain length of time after the event occurred. The period of time in which a claim must be filed is called the limitation period.

The counting of time during which court action can be started usually begins on the day when the problem took place (the date of the cause of action). If you aren't sure about the limitation period that applies to your case, you should consult a lawyer.

How do I get started?

Your first step is choosing the right Small Claims Court in which to file your claim. Your next step is to pick up the right form to start your court action. You can pick up this form at any Small Claims Court office. The forms are also available on the Ministry website at www.attorneygeneral.jus.gov.on.ca. Click on "How May We Help You?", then click on "Going to Court". Once the form is completed, however, you will have to mail it or take it in person to the correct court.

> **Note:**
> 1. If you are mailing the claim to be issued, you must submit the claim fully completed and in duplicate.
> 2. The original claim will be kept by the court office.
> 3. To have the copy of the claim returned to you, please submit a stamped self-addressed envelope.

When you file your claim, you will have to pay a court fee. This fee is for the cost of handling your claim.

If you win your case, any fees you have to pay may be added to the money you are entitled to collect.

What information do I need to file a claim?

On a claim form, you must write clearly and accurately:

- your full name, address, postal code and telephone number;
- the full name and address of every person you are suing;
- if the address is a rural route, you should supply the lot and concession number;
- the amount of money you are claiming; and
- a short, clear summary of the events that took place and the reasons you think you are entitled to your claim.

What information do I have to include about the defendant?

- If the claim is against an individual, include the defendant's full given name and address, apartment or unit number and postal code.
- If more than one party is named in your claim, you will also have to include each person's full name and address.
- If you are suing an incorporated company (it usually has Limited, Ltd., Corporation, Corp., Incorporated or Inc. after its name), make sure you have the correct corporate name, address and postal code. If you want a specific corporate officer to be served, include his or her name and position in the corporation.
- If the business you are suing is not incorporated (a sole proprietorship or partnership), you will need the correct name of the business and the address for service. Alternatively, you may wish to serve notice on the proprietor or partners, or name them as parties.

For information on how to search a corporation or registered business name, you may contact the Companies Helpline, Ministry of Government Services. Please note that there is a fee for the search and the search **will not** be conducted over the phone. The Helpline can be reached at (416) 314-8880 or toll free in Ontario at 1(800) 361-3223. Before requesting a search, you must have the exact name of the corporation or the Ontario corporation number, or the exact name of the registered business.

What documents do I include with my claim?

If your claim is based on a document such as a bad cheque, a promissory note, a contract or a receipt, you must file copies of the documents with your claim. Make sure you bring the originals to the trial. If any documents are lost or not available, you must say so in your claim and explain why they aren't attached.

The court office keeps the original claim form and copies of the supporting documents you attached to your claim.

- You will need one copy of the claim and each supporting document for each defendant to be served.
- If you need copies to be made by court staff, a fee will be charged for each copy made.

Can I ask for interest on the money I am claiming?

If you want interest, you must ask for the interest in your claim. The rate of interest you can collect may have been agreed upon by the parties or if no rate has been agreed upon, you may be awarded an amount set out by law or by the judge.

If you win your case, you may be awarded interest as ordered by the court or as allowed by the *Courts of Justice Act*.

Before judgment the allowed interest is called pre-judgment interest.

After judgment the allowed interest is called post-judgment interest.

Formula to calculate pre-judgment interest:

PRINCIPAL JUDGMENT AMOUNT
- x pre-judgment interest rate %
- x number of days from date the claim arose (or the claim was issued) to date of judgment
- ÷ 365 days

Formula to calculate post-judgment interest:

TOTAL JUDGMENT AMOUNT
- x post-judgment interest rate %
- x number of days from date of judgment to date of enforcement process (or payment received)
- ÷ 365 days

Note:

Calculation of interest is always on the amount owing from time to time as payments are received. This is true for both pre-judgment and post-judgment interest.

Can I make a claim if I am under 18?

A person under 18 years of age may make a claim, without an adult representing them, for up to $500. If a minor is suing for more than $500, an adult must act on his or her behalf (litigation guardian). This adult, who is usually a parent or guardian, must file a form with the court consenting to be a litigation guardian.

Can I sue for more than the Small Claims Court limit?

You can only sue up to $10,000.00 (Canadian), not including interest and costs. If your claim is over $10,000.00 and you still want to sue in Small Claims Court, you must give up any amount over the $10,000.00. You cannot sue for the amount you are giving up, at a later date.

You cannot claim for interest on the amount(s) waived over the $10,000.00 limit.

If the amount of your claim is more than the current limit, you may still choose to use Small Claims Court because it is simpler and less expensive. However, you will have to give up any attempt to regain more money than the Small Claims Court limit. You also give up any right to regain this money in any other court.

You also cannot divide the amount of money you are claiming, to try to recover it in separate cases. You cannot, for example, divide a $10,500 claim into a $10,000 claim and a $500 claim to be dealt with in a second case. If you believe you are owed an amount higher than the Small Claims Court limit and you want to try to recover all of it, you will have to take your case to a higher level in the Superior Court of Justice.

Serving your Small Claims Court claim

The Rules of the Small Claims Court permit litigants to arrange for service of their own claims. The following information is provided to help you serve your claim in a proper and timely fashion. Please make sure that you read the instructions carefully. If you have any questions, check with a lawyer.

- You may serve the claim yourself.
- You may have a friend, a business associate, or a private process serving agency serve the claim for you.
- You may have your lawyer arrange for service of your claim.

How is a claim (and other documents) to be served?

A claim can be served on any day of the week except Sunday.

Service (delivery) of documents is a very important requirement in processing any Small Claims Court process. To assist, the full rule on service is included in this guidebook. This rule came in force on September 1, 1998. Read carefully the section or sections that apply to the process you are involved in. The manner of service is up to you as long as you comply with the rule as set out. (See Rules pages 21-25.)

What should I do if the method of service I have chosen is unsuccessful?

- If you are unable to serve the claim using one of the methods described previously, use one of the other available options.
- You may also apply by motion to a judge for an order for substituted service if the party or person to be served has not moved and all other methods have proved unsuccessful.

How do I apply for an order for substituted service?

- You must complete a notice of motion and an affidavit (in support of motion). For more information, see the guide for completing a notice of motion and affidavit (in support of motion).
- You must state in the affidavit (in support of motion) the reasons why the claim could not be served and how you propose to have service made (i.e. posting on a door).
- The affidavit must be sworn before a commissioner for taking affidavits, a notary public or a member of the court staff who has been appointed a commissioner for taking affidavits.
- Take the completed notice of motion and affidavit (in support of motion) to the court office where the claim was entered. The court staff will tell you what you need to do next. The process may change slightly between offices. In some offices, you may not need to appear in court unless requested to do so.
- If the judge requires your attendance, the court office staff will advise you of the date to appear.
- Once the order for substituted service has been granted by a judge, court staff will mail you a copy if you leave a stamped self-addressed envelope when filing your notice of motion and affidavit (in support of motion). Serve both the claim and a copy of the order in the manner directed by the judge.

What if I cannot obtain an order for substituted service and I am still unable to serve the claim?

- If you are unable to serve the claim (i.e. the person to be served has moved, etc.), you should keep the copies of the claim until you are able to locate a new address for service.

When can I serve the claim?

- A claim can be served on any day of the week, even on a holiday as long as the holiday does not fall on a Sunday.
- A claim can only be served on a Sunday if permission to do so has been given by a judge.

How long do I have to serve a claim?

- A claim must be served within six months from its date of issue.
- If a claim cannot be served within six months, it must be renewed by a judge before any further attempt is made to serve it. Renewal is obtained only by way of a notice of motion to a judge.
- A claim will always be renewed for a specific period of time. As a result, it may be necessary to have it renewed more than once.

How do I have a claim renewed?

- Prepare a notice of motion and an affidavit (in support of motion) setting out why you were not able to serve the claim within the six months. If necessary, a self-help guide is available at the Small Claims Court office to help you.
- If the judge requires your attendance, the court staff will advise you of the date to appear. Ask the clerk when you file the motion if you need to attend on the motion. A fee is required to file the notice of motion.
- Once the order is granted, you must return all copies of the claim to the court office where the claim was issued.
- Court staff will record this information on the original claim and the copies.
- The copies will then be returned to you for service.

How do I prove that the claim was served?

You will need to provide the court office with a sworn affidavit of service setting out who was served and how service was made. For more information, see the guide for completing an affidavit of service, which is available at the Small Claims Court office.

Note: Where the claim was served by mail alone, the affidavit of service is not to be completed until at least twenty days have passed following the date of mailing.

YOU SHOULD BE AWARE THAT IT IS A CRIMINAL OFFENCE TO KNOWINGLY SWEAR A FALSE AFFIDAVIT.

- If service was made in accordance with a judge's order for substituted service, you must return the original order for substituted service and the supporting affidavit.
- If service was made on the party's solicitor, you must return a copy of the claim which contains an acceptance of service and date of acceptance signed by the solicitor.

Do not submit proof of service of the claim until required by the court. Generally, this is when you are requesting default judgment to be signed.

Who can swear my affidavit of service?

Your affidavit of service can be sworn by:

- a Small Claims Court office staff member who has been appointed a commissioner for taking affidavits;
- a lawyer who is entitled to practice law in Ontario;
- a notary public;
- any other person who has been appointed a commissioner for taking affidavits in connection with court documents.

The affidavit of service **must** be signed in the presence of the person before whom you wish to have it sworn.

An affidavit establishing proper forum

What is an affidavit establishing proper forum and why do I need it?

An affidavit establishing proper forum is needed to prove that the plaintiff is allowed to start the lawsuit in a particular area (territorial division) and the reasons why.

It tells the court that the action was properly issued in the correct territorial division.

It is used when the defendant is served in a territorial division other than where the claim was issued.

Why does the court require this form?

Before the clerk can sign default judgment, the clerk is required to ensure that the claim was properly issued in the correct jurisdiction to verify that the court officer has legal authority to proceed on default/trial.

What do I do after I complete my affidavit establishing proper forum?

You must take the completed affidavit to the court office where the lawsuit was started and file it together with your completed claim. You may also file this affidavit at the time you issue the claim.

If you are making the affidavit, you must swear or affirm that the information in the affidavit is true.

If another person is making the affidavit on your behalf, then that person must swear or affirm that the information in the affidavit is true.

The affidavit must be signed in front of a person (commissioner) authorized to take oaths or affirmations. The commissioner will ask the person making the affidavit to swear or affirm that the information in the affidavit is true, will ask that person to sign the affidavit, and will then sign the affidavit as sworn.

REMEMBER: IT IS A CRIMINAL OFFENCE TO KNOWINGLY SWEAR A FALSE AFFIDAVIT.

Can I recover the cost of service?

- If service was made by mail and you wish to recover the cost of mailing the claim, you must provide the court office with a post office receipt showing the cost of mailing.
- If you had someone else serve the claim on your behalf and where service was made using a method other than by mailing, you must provide the court office with an invoice or statement detailing the disbursements incurred for service of the claim. You can only recover a maximum of $20.00 per person to be served regardless of the amount paid to serve the claim.

Frequent and infrequent users

Infrequent claimants pay a lower fee to request the issuing of a claim, request signing of default judgment or setting a trial date. The processes and forms are the same for both frequent and infrequent users of Small Claims Court. It is expected that frequent users should pay a higher portion of the costs incurred to run the Small Claims Court.

How is a frequent claimant identified?

A frequent claimant is a party (not the claimant's agent) who files (issues) 10 or more claims per calendar year in a Small Claims Court in the same location.

Once a claimant has filed (issued) the 10th claim in a single Small Claims Court location, that claimant becomes a frequent claimant in that court location and is required to pay the frequent claimant rate for all subsequent steps in all actions where a frequent claimant rate applies, whether or not a frequent claimant rate was paid when the action was commenced.

Q1. Can an agent/lawyer filing on behalf of a client be a frequent claimant?

No. For example, an agent Pro-Server files a total of 22 claims:

5 claims for Bank of "X";
2 claims for Your Dental Office;
12 claims for ABC Department Store; and
3 claims for Next-Door-Window Cleaners

(a) If no previous claims were filed by any of the plaintiffs in the current calendar year, the only frequent claimant in this example is ABC Department Store and it would pay the frequent claimant fee on 2 claims. All other claimants would pay the infrequent claimant fees for their respective filings.

(b) If Bank of "X" had previously filed 8 claims, it would pay the frequent claimant fee on 3 out of the 5 claims being filed. After the 10th claim is issued, the frequent user fee must be charged for all subsequent activities to which a frequent user fee applies, for example, requesting the signing of default judgments or fixing a date for trial for previously issued claims.

Q2. Is the address always a factor in determining whether a plaintiff is a frequent or infrequent user?

No. For example:

(a) Claimant: Bank of "X"

In this example, the bank may have several branch offices. The plaintiff is the same, regardless of which branch office filed the claim.

The business or organization's name is the only factor in determining whether the plaintiff is or will become a frequent user.

6. What should I do if a claim is made against me?

How you respond to a claim depends on a few factors. Do you agree you owe the money claimed? Do you disagree completely, or with just part of the claim? If you agree, can you afford to pay the claim all at once? Do you feel the person suing you owes you money, or that it's someone else's fault altogether? These are the different steps you can take. For more information, see the guide to completing a defence which is available at any Small Claims Court office.

"I don't agree with the amount or the facts of the claim."

- File a defence with the Small Claims Court office, in person or by mail. There is a fee to file a defence.

YOU MUST SUBMIT ONE COMPLETE COPY OF THE DEFENCE (INCLUDING ANY ATTACHMENTS) FOR EACH PLAINTIFF AND ONE COMPLETE COPY FOR THE COURT OFFICE.

- You must file your written defence within 20 calendar days after being served with the claim. If you fail to file your defence within 20 calendar days from when you were served with the claim, the plaintiff may note you in default and get a default judgment against you. This will be done without further notice to you. Once you are noted in default, you cannot file your defence without the consent of the plaintiff unless you are able to get a court order allowing you to file your defence.
- For more information, see the section on service (Rule 8) and time (Rule 3) found on pages 21 to 25 of this booklet. The rule on service tells when a document is considered to have been served if it was not served personally.

"I guess I do owe that money."

- You will have to pay the amount specified in the court claim plus interest and court costs, which can vary.
- To avoid a judgment, pay this total directly to the plaintiff within 20 calendar days of receiving the claim.
- When you follow these steps, you avoid having a judgment made against you which could affect your credit rating.

"I only owe part of what they say I do."

- If you feel you only owe part of the money mentioned in the claim, you can file a defence only for the part you feel you do not owe.
- Pay the plaintiff directly the amount you agree you owe. The Small Claims Court trial will then only be for the amount that is still in dispute.

"I do owe them money, but I just can't pay it now."

- Within 20 calendar days following service of the claim on you, you must file a defence indicating the amount which you admit to be owing and setting out how you propose to repay the plaintiff. A copy of the defence will be mailed by the court office to the plaintiff.
- If the plaintiff is in agreement with your offer, no further proceedings may be taken provided you make the payments. If the plaintiff does not agree with the terms of your proposal, the plaintiff must, within 20 days of receiving a copy of your defence, request the court to set up a hearing to consider and rule on your proposal.
- If you fail to make your payments as offered and accepted by the plaintiff, the plaintiff may request a default judgment against you. Default judgment would be signed against you without further notice to you.
- All payments should be made to the plaintiff or the plaintiff's representative. Where a hearing has been requested by the plaintiff but has not yet taken place, you should still continue to make payments to the plaintiff or the plaintiff's representative.
- At the hearing your financial position will be reviewed, following which the court may make an order that could differ from your proposal.
- If you don't attend the hearing, judgment may be entered against you for the amount admitted to be owing without any consideration being given to your offer of payment. Similarly, if you default in making any of the proposed or ordered payments, the plaintiff may request that judgment be entered against you. The plaintiff may then use any of the enforcement procedures permitted by the *Rules of the Small Claims Court* to immediately recover all the amounts still owing.

"I don't owe them . . . they owe me!"

- At the same time or after you file your defence, you can issue a defendant's claim. In the defendant's claim you will need to set out the claim and the reasons you are claiming against the plaintiff and/or another party. Explain clearly why you believe the person you are taking to court owes you money and state the amount you believe is owed to you. In a defendant's claim against another party other than the party suing you, set out:
  - why the plaintiff is suing you;
  - the reasons you believe the third party is responsible to you, if you are found responsible to the plaintiff;
  - the amount of the original claim you feel the third party is responsible for; and
  - the full name, address and telephone number of the third party.
- Attach your relevant documents to the defendant's claim. The court office will file and issue this claim and return a copy to you to serve (deliver) to the person(s) named in the defendant's claim.

THERE IS A FEE FOR FILING A DEFENDANT'S CLAIM

- When you go to court, the judge will usually give you the chance to present your claim against the named plaintiff(s) as part of the same trial or may direct that the defendant's claim be heard separately.
- The defendant's claim replaces the counterclaim or third party claim used prior to September 1, 1998.

"If I am found responsible, someone else is responsible to me."

- If you feel that someone else should pay you if you have to pay the plaintiff, you should file a defendant's claim with the court against the party you feel owes you compensation.

"I wish to make a claim against a person other than the plaintiff, arising out of or related to the plaintiff's claim."

- As in item 6 above, you must file a defendant's claim against the person that you feel owes you money in respect of a claim arising out of or in relation to the plaintiff's claim.
- In your defendant's claim, you must clearly set out:
  - the full name and address of the person that your claim is against;
  - the amount of money that you are claiming;
  - how your claim relates to the plaintiff's claim; and
  - the detailed reasons for your claim against the third party.
- Attach any relevant documents to your claim.
- You will be required to deliver or arrange for delivery of copies of your claim to the person named and to all parties who are entitled to a copy. Your claim will be heard at the same time as the plaintiff's claim unless a judge orders otherwise.

"I don't think this court can hear a claim against me."

- If you feel that the local court office in which the claim was filed does not have authority to hear the case, file a defence stating the reasons why. These reasons could be that:
  - the amount exceeds the Small Claims Court limit;
  - the court is not located where the events took place or where you live or carry on business.

Do not, for any reason, ignore a claim. If you do not respond, the cost of each step the claimant takes may be added to any judgment against you.

7. What happens if I don't file a defence?

If you don't file a defence within the time limit allowed, the clerk, upon receiving a request from the plaintiff, will note you in default and may sign a default judgment against you.

If the suit being brought against you is for damages and you have been noted in default at the request of the plaintiff, a judge may assess a monetary value for the damages and enter judgment against you in your absence. A default judgment usually includes an award of interest, if it has been clearly requested in the claim, and costs.

Once a default judgment has been signed, the plaintiff can legally enforce payment.

If you didn't file a defence within the time limit, but still wish to do so, and you have been noted in default or a default judgment has been entered against you, you can try to obtain the written consent of the plaintiff to set aside the judgment or the noting of default. If consent is refused, you can ask a judge to set the judgment aside by filing a notice of motion and an affidavit (in support of motion) stating the reasons why you failed to file your defence within the time limits.

Note: If the last day of the time limit falls on a holiday, please see Rule 3 on page 25.

8. What is a motion?

A motion is a procedure which is used when you want a judge to make an order. For example when you want to:

- set aside a judgment made against you and to stop enforcement processes;
- extend the time to serve a claim;
- obtain an order for substituted service;
- set out a schedule of payments on the judgment.

9. How do I make a motion?

You must first attend the court office and obtain and complete the necessary forms (notice of motion and affidavit (in support of motion)). The court office will set out the date, time and place of the hearing. The affidavit (in support of motion) will set out reasons why you feel that the order should be granted. You must swear or affirm that the information contained in the affidavit is true.

The notice of motion and affidavit (in support of motion) must then be served (delivered) to the other side at least seven days before the date of hearing (add 5 more days if mailed). The original notice of motion and affidavit (in support of motion) together with proof of service, must be filed with the court prior to the hearing.

The court will charge a fee for filing the motion.

10. Can I settle a claim against me before the trial?

Yes, you can! Settling before the trial will save time and money. A settlement can be reached through either a written or an oral agreement. An effort to settle out of court can be started by either the plaintiff or the defendant. If the offer is accepted, the matter is over. If it is not accepted, the case will go to trial as planned.

A written offer to settle a claim outside of court received by the other party at least seven days before the trial that is not accepted can also mean you may be awarded extra costs by the judge.

For example, if the plaintiff has his or her written offer to settle rejected by the defendant, and the plaintiff wins a judgment, the plaintiff may also be awarded up to twice the court costs, including certain lawyer's fees. If the plaintiff is unrepresented, he or she may be awarded an inconvenience cost. This could happen if the judgment they win is higher than or equal to the settlement offer.

A defendant whose written offer to settle is not accepted may also be awarded up to twice the normal court costs. This would happen if the amount awarded to the plaintiff is equal to or less than the settlement offer made by the defendant.

If a written offer to settle out of court is accepted, but the terms of payment are not met, the person who was to receive the settlement can ask the court for a judgment in the terms of the offer or can continue to trial for the original amount claimed.

The cost consequences listed above do not apply to oral offers to settle.

11. How do I get ready for my day in court?

Is the pre-trial conference important?

Yes! The purpose of a pre-trial meeting is to bring both sides together in an informal setting. The judge, referee or other person appointed by the court tries to define or narrow the disagreement and resolve the problem before the trial begins. He or she helps the parties understand the factual and legal problems and makes sure that each side will know what the other side will bring to or say at the trial through witnesses or

documents. The pre-trial official will also try to see if there is any way the dispute can be settled without going to a formal trial.

A pre-trial conference can be requested by either party in the lawsuit or may be ordered by a judge. It is very important to attend this meeting. Although witnesses do not attend a pre-trial conference you should bring all your documents.

If no agreement can be reached at this time, a trial date will generally be set by the court. There is a fee that must be paid for scheduling the trial. A notice of trial setting out the trial date, time and location may be mailed to you.

What if I can't attend the pre-trial or trial?

When you get the notice of the date for the pre-trial conference or trial you may already have made other important arrangements and can't, for a good reason, come to the hearing or trial. You must get the other parties' consent or judge's approval to change the date (this is called an adjournment). If you don't appear, the court can award severe costs or penalties against you for not being there or for wasting the court's and the other side's time. In some circumstances, if the plaintiff fails to attend the court may dismiss the claim or a defendant who fails to attend may have a judgment made against him or her.

Try to get the consent of the other party or parties, in writing, to the adjournment. If the other side does not consent, someone must appear in court so the judge can decide what to do. If there is enough advance notice and an adjournment is granted, the judge will usually try to set a date when everyone can be present.

What evidence do I need to support my case?

A case is decided by evidence presented at the trial.

Here are some examples of evidence to be brought to court to support your case:

- Contracts, letters, invoices, statements, plans, drawings, written expert opinions;
- Quotations (at least two) for repair work;
- Witnesses (any person who is able to clarify or support your case);
- Photographs which will help the court understand the reason for the claim or defence;
- Where a claim is being made against a parent under the *Parental Responsibility Act, 2000* for property damage, loss or destruction caused by a child under 18 years of age who has been found guilty and sentenced for the offence, you MAY file a copy of the *Youth Criminal Justice Act* sentence order from the Youth Justice Court or the *Young Offenders Act* order of disposition from the Youth Court, should you choose to do so, where the child was found guilty and sentenced for the offence. To obtain either the sentence order or order of disposition, you MUST file with the Youth Justice Court office, a completed request for a copy of a *Youth Criminal Justice Act (Canada)* sentence order form for the purposes of the *Parental Responsibility Act, 2000* to support your request for a copy of the sentence order or order of disposition. A blank request form, which includes an affidavit, may be obtained from any Small Claims Court office or Youth Justice Court office;
- Should you obtain a *Youth Criminal Justice Act* sentence order from the Youth Justice Court or a *Young Offenders Act* order of disposition from the Youth Court, and intend to file and rely upon it in the Small Claims Court, you MUST also file with the Small Claims Court the completed notice about evidence obtained under the *Youth Criminal Justice Act (Canada)* form. This pre-printed form may be obtained from any Small Claims Court office.

When you receive notice of the trial, contact all the witnesses you want to give evidence on your behalf. Let them know the date, time and place of the court case. Be sure that they are prepared to spend the whole day in court. Your case could be called at any time on the day of the trial.

What proof do I need at the trial?

The best evidence is from witnesses in court who know what happened. The plaintiff needs to bring whatever witnesses and documents he or she believes will prove the other side is responsible and that the amount

claimed is reasonable. The defendant must prove the opposite. You can prove your case by witnesses in court telling what they know or by documents they wrote.

If you tell the judge what was said, or show a document that was written by someone who is not in the courtroom, the judge may accept or refuse to accept this type of evidence (hearsay). The weight given to hearsay evidence, if it is accepted, is up to the judge.

If you can't bring the witness who made the statement or wrote the document to be used in court, you may serve copies of the statement or document on all parties in the case. The name and address of the person who wrote the document must be included.

If these documents are delivered to the other side at least 14 days (19 days if sent by mail) before the trial the court can accept the statements.

If you have received such a document from the other party, and you want to question the writer in court (cross-examine), you must summon the witness and notify all other parties that you did.

How to arrange for your witnesses to attend

When your trial date is set, you will want as soon as possible to arrange for your witnesses to attend the trial. If someone does not want to testify on your behalf, you will have to request the clerk to issue a notice (summons to witness) requiring them to attend. This will also be proof to an employer, who must allow an employee to attend court during work hours.

You will have to pay a fee to the court office for the summonses and you will also have to pay a witness fee and travelling expenses to anyone you want to attend. You may be able to recover these fees from the other party if you win your case. You are responsible for service of the summons.

Before the trial it is wise for you to discuss with your witnesses the evidence they will be presenting. After you talk over the facts, you will be able to prepare your questions and decide on the best order for your witnesses to appear before the court. Talking to the witnesses is smart, and necessary. However, any attempt to influence them to say anything but the whole truth is illegal. You should prepare written questions to ask your witness. The questions should be as brief as possible.

Witnesses are entitled to attendance money to appear in court. For more information, see the guide to completing a summons to witness, which is available at any Small Claims Court office.

How do I prove a claim for damages?

One of the problems you can resolve in Small Claims Court is a claim for damages caused by such things as accidents or poor quality work. As you prepare your case for trial, it will help if you have at least two estimates for:

- what needs to be done and what it will cost to complete work that has not been finished;
- what needs to be done and what it will cost to repair work that is faulty; or
- what it will cost to repair or replace damaged property.

The two estimates are recommended as added proof that your claim for damages is fair and reasonable. If you have already had the property damage repaired, it is best to submit copies of the repair estimates or the invoices themselves to the court office when you file your claim. They can then be served along with your claim. The judge may also want the person who prepared the estimates or did the repair to appear in court for the trial.

12. What happens at the trial?

What should I do when I arrive at the court?

Once you arrive at the time shown on your notice, check the list and wait until your case is called.

When your name is called, walk to the front of the courtroom, state your name and take a seat at the table in front of the judge's bench.

The person making a claim (the plaintiff) sits on the right. The defendant sits on the left. The courtroom clerk, and sometimes a court reporter (who keeps a record of the hearing), will be seated in front of you. The witness stand is beside the judge.

How do I present all the facts about my case to the judge?

The person filing the claim (the plaintiff) has to prove the case on what is called the balance of probabilities. This means the plaintiff has to prove to the judge that the events took place, more likely than not, in the way the plaintiff states. The defendant must show that his or her version of events is more likely to have taken place than the case presented by the plaintiff.

How do I give evidence?

The plaintiff is usually entitled to present his or her evidence first, followed by the defendant. Whether you are a plaintiff or a defendant, you may be the only person speaking for your side, or you may also call witnesses. Whether you have witnesses or not, you will still want to present your own evidence.

- When you give evidence, you enter the witness box and take an oath or affirmation that what you are about to say is true.
- Speak in a direct manner. Start at the beginning and tell the judge the facts in the order they occurred. Try to avoid repeating yourself or adding details that don't matter to your case. The judge may ask questions to help clarify your testimony or to get a further explanation of what happened. You can bring notes to refer to, but you cannot read these notes as your evidence.
- If you have any documents such as contracts, receipts or cancelled cheques you want to use as evidence, present them while you are giving your evidence on the witness stand. They will then be taken from you and marked as exhibits. You can refer to exhibits as you present your case. At your request, this evidence may be returned to you 45 days after the trial unless an appeal has been filed.
- When you are finished presenting your evidence, your opponent or their representative will be given the chance to question you. He or she will also be able to question any witnesses who have given evidence on your behalf. This questioning is called cross-examination. Its purpose is to point out any factual errors or inconsistencies in your evidence or the evidence of your witnesses.
- Once your opponent has introduced his or her evidence, you will be permitted to cross-examine the other side and any witnesses and ask questions. The judge will control any cross-examination to make sure a witness is not being treated unfairly. The judge won't allow you to argue with a witness or use this opportunity to tell your side of the story.

What is the judgment?

The judgment, or order, is the decision of the judge who heard your case, which usually states that one side in the case is entitled to receive a certain sum of money or personal property from the other. This amount may include interest, court costs, or both. If the defendant has made a defendant's claim, and the facts presented support the defendant's claim, the judgment may state that the plaintiff owes the defendant money. The judgment is the final decision in a court case. It is not a guarantee of payment.

Usually a judge in a Small Claims Court will give an oral judgment right after both sides have finished presenting their cases. Sometimes, however, the judge may want more time to review the facts or the laws which apply to the case. If the judge postpones a decision until later (this is called reserving judgment), a copy of the judgment or final order will be mailed to each party when the decision is made.

If the judge makes an order against you, and you are unable to pay the full amount, you may ask for an order to pay by instalments as soon as the judgment has been given. Alternatively, you may apply by way of a notice of motion for an order for instalment payments at any time after judgment.

Can I recover the fees I had to pay to go to trial?

As you prepared your case for trial, you had to pay a fee to the court office before many of the necessary steps were carried out. If you win your case, you may be entitled to a judgment to allow you to recover much of this money from the losing party. The money you can get back generally covers court costs and certain witness fees.

If you used a lawyer and also won a case for more than $500, the Rules of the Small Claims Court provide that the court may award a counsel fee of up to $300 to go towards your lawyer's fee. If you were represented by a law student, the maximum you can receive is $150. If you were not represented by anyone else and you were successful in a claim over $500, the court may award you up to $300 as compensation for inconvenience and expenses if the judge feels the losing party made the case more complicated or time-consuming than was necessary. The court may also allow the successful party up to $50 for preparation and filing of the necessary documents.

Can I appeal a judgment?

You can appeal a judgment if the amount of the judgment, not including court costs, is more than $500 or there is an order directing recovery of personal property valued at more than $500.

General information about appeals

An appeal is based upon a significant legal or factual mistake that may have been made by the trial judge. It is not an opportunity to retell your story. The judge who hears the appeal will not hear any new evidence; he or she will rely entirely on the transcript and the record from the trial.

An appeal is made to the Divisional Court. Processing an appeal is more difficult and costly than the trial in Small Claims Court. If you wish to make an appeal, you may want to seek legal advice before you begin. The Law Society's Lawyer Referral Service can suggest the name of a lawyer who will provide you, without charge, with an initial consultation of up to 30 minutes to help you determine if you have a worthy case. The telephone number for this service is 1(900) 565-4577 and there is a $6.00 fixed charge for each call.

Steps in an appeal

Appeals to the Divisional Court must be brought in the region where the original trial took place unless the parties agree otherwise. For example, if your Small Claims Court trial took place in North Bay, then your appeal must be brought in the Northeast Region. Court staff can advise you regarding the proper site to file your appeal.

Within 30 days of your trial judgment, a notice of appeal must be served (delivered) to every party affected by the appeal.

Within 30 days of filing the notice of appeal with the court, you must file proof that you have ordered transcripts of the trial proceedings. There is a per page cost for obtaining a transcript. Within 30 days of receiving notice that the transcripts are ready, you must arrange for the record and the original exhibits to be forwarded from the Small Claims Court office to the Divisional Court Registrar. You must also file with Divisional Court a factum, a concise summary of the relevant facts and law; an appeal book, which contains in part the notice of the appeal and the order or decision appealed from; and a transcript. A copy of each document must also be given to the opposing party.

How do I ask for a new trial?

A motion for a new trial must be started within 30 days of the original trial. Grounds for requesting a new trial include:

- the plaintiff or defendant could not appear at the first trial, through no fault of their own;
- an important and relevant piece of evidence, such as a lost cheque or receipt, only became available after the end of the trial;

- the name or address of a witness whose evidence might have been crucial to the case only became available after the trial ended; and
- there was an arithmetical error in calculating the amount of damages.

If your request for a new trial is based on an arithmetical error, you must on a motion show the previous judge's error in calculation. To do so, you will need a copy of the transcript of the last hearing. This is obtained from the court reporter who was at the last hearing. You also need to show the correct calculation(s).

Before going through this formal process it may be better for you to make efforts to clarify the error with the other side. If you can agree to the error and the correction then you can consent to the correct calculations. A consent to vary the calculated amount is a more effective way to resolve a calculation error than going through a new trial.

To request a new trial, you must file a notice of motion. A fee is payable to file the notice of motion.

13. I won...but how do I get my money?

Sometimes when you win a judgment in Small Claims Court, the person who owes you money will pay it promptly, or make arrangements for payment with you which are then followed. At other times, the person who has been ordered to pay ignores the order . . . they won't or can't pay.

It is then up to you to take the steps needed to enforce an unpaid judgment. The court staff will proceed once you give clear written directions, complete the necessary forms, and pay the necessary court fees. These fees are recoverable when you collect on the judgment.

The enforcement steps taken by you will depend mainly on the information you have about the debtor's assets and ability to pay. Money in a debtor's bank account or a percentage of a debtor's wages can be seized by way of garnishment. Assets such as cars can be seized and sold and a lien can be placed on land owned by the debtor. You have to supply the court office with the necessary information to take these steps on your behalf. If you do not have any information about the amount of money, property and investments owned by the debtor (assets), as well as the amount owed by the debtor to other people, this information may be obtained by way of examination of the debtor.

- You need a certificate of judgment issued if you want to enforce your judgment, by garnishment and examination proceedings, against a debtor who has not paid the amount owing to you and who lives or carries on business in a jurisdiction different from where you got your judgment.
- The certificate of judgment must be issued in the court office where the judgment was made.

The options for enforcement:

Notice of garnishment

If a court has ruled in your favour and you have not received payment, you can claim/demand money owed to the debtor by someone else. This is called garnishment.

If you provide the court with a completed affidavit and notice of garnishment, and instruct the court to issue the notice of garnishment, part of the debtor's wages may be obtained directly from the debtor's employer. Other funds can be garnished from bank accounts or money owed through a contract.

You will be required to send the notice of garnishment to the person who owes money to the debtor. The person is called the garnishee. The garnishee then has to make payment directly to the court office, which, in turn, sends the payment to the creditor.

As of September 1, 1998 joint debts are garnishable. You will be able to garnish up to 50% of the joint debt. The garnishee is required to identify the co-owners of the debt to the creditor and the court. The creditor must notify the co-owner of the joint debt about the garnishment. The co-owner of the debt can dispute the amount of money payable from the joint debt. To do so, the co-owner of the debt must make a motion to the court. For more information see the guide to completing a notice of garnishment.

Before a notice of garnishment is issued, you as the creditor first have to file a sworn statement (affidavit re: garnishment) with the court where the debtor lives or carries on business. This affidavit re: garnishment must contain the following information:

- the date of the judgment or order and the amount awarded to the creditor;
- the name of the Small Claims Court in which the judgment was made;
- the rate of post-judgment interest payable;
- the total amount of any payments made since the order or judgment was made;
- the amount owed by the debtor including post-judgment interest;
- a statement that the creditor believes that the garnishee does or will owe money to the debtor;
- details of money owed by the garnishee if it is not for wages; and
- the name and address of each person to whom a notice of garnishment is to be sent.

Garnishment of wages is restricted to 20%. This is regulated by section 7 of the *Wages Act*. By motion made by either party, the amount of wages can be increased or decreased by a judge's order.

An affidavit for enforcement request(s) is required when filing a request for certificate of judgment, writ of delivery, writ of seizure and sale of personal property and writ of seizure and sale of lands.

Writ of delivery

In a case where the judge orders the defendant to return personal property to the plaintiff, the plaintiff can, after filing an affidavit that the personal property has not been returned, ask the court office to issue a writ of delivery. This writ gives the authority to the bailiff/enforcement officer to seize the property named in the court order and return it to the plaintiff. If the property cannot be found, the plaintiff can ask the court by way of a notice of motion for an order directing seizure of other personal property belonging to the defendant. There is a fee to file the notice of motion.

Seizure of personal property

If a debtor does not pay a court order to meet his or her debt, the creditor can act to have the debtor's property seized and sold to satisfy the judgment.

Before the court office can issue a writ of seizure and sale of personal property the court office must receive written instructions and a completed writ of seizure and sale of personal property from the creditor and a statement of the balance of money owing. The writ can then be enforced and the property of the debtor seized and held for auction.

Before the debtor's property can be seized and/or sold, the following must occur:

- the creditor must give specific instructions to take possession of the property;
- the creditor should ensure that the items to be seized are owned solely by the debtor; and
- the creditor must deposit enough funds with the court office to cover the costs of removal and storage of the items to be seized as well as the cost of publishing notice of the seizure. These costs will be added to the amount owing by the debtor.

Goods or property seized have to be sold at public auction, and it is easier to sell items that are free of any other legal claims (liens or security interests). Certain goods cannot be seized. These include clothing, furniture, utensils, tools and home implements.

At any time up to the sale of the seized items, the debtor can prevent the sale by paying the amount of the judgment, plus costs and interest. The debtor can also ask the court to have the seizure postponed or to pay the judgment in instalments.

Writ of seizure and sale of lands

A creditor can request that the court office issue a writ of seizure and sale of lands to the sheriff of a county or district where the debtor owns land. This may prevent the debtor from selling or purchasing any land until the judgment is paid. For more information see the guide to completing a writ of seizure and sale of lands, which is available at any Small Claims Court office.

Examination of the debtor

Before the court office can issue a notice requiring the debtor to come to court for an examination of the debtor, the creditor must complete a sworn statement (affidavit for examination).

The affidavit sets out the same information as described in the garnishment section of this booklet.

After the creditor has prepared the affidavit for examination and notice of examination, the court office will issue the notice of examination requiring the debtor to come to court. At this hearing, the debtor's financial status will be reviewed to determine his or her ability to pay. After the hearing, the court may order the debtor to pay the judgment in full or by instalments, or may delay the payment for a period of time if the court believes the debtor is unable to pay at that time.

The notice of examination must be issued in the Small Claims Court where the debtor lives or carries on business. If the debtor has moved and you know the new address, you will need to transfer the judgment to the Small Claims Court where the debtor lives or carries on business. For more information see the guide for completing a certificate of judgment which is available at any Small Claims Court Office.

As the creditor, you are entitled to ask questions of the debtor at an examination hearing. The questions should be about the debtor's financial status and the debtor's ability to pay the judgment. You should write down the questions you want to ask and should be prepared to write down the answers. The judge may also ask questions at this hearing. The judge will also rule if a question is improper or needs to be answered.

Warrants

If the debtor or other person (an officer or director of a corporate debtor or sole proprietor or partner of a business) fails to attend an examination hearing and the court is satisfied that the failure to attend is willful, or if the debtor attends and fails to answer questions, the judge may find the debtor or other party in contempt of court. The judge may order the debtor or other person to attend before the court for a contempt hearing. The creditor needs to serve the notice of contempt hearing on the person ordered to attend the contempt hearing. See the section and rule on service for more information on the service requirements. At the contempt hearing the judge may order the debtor be sent to jail for contempt for up to forty days. The creditor will have to supply the court with additional information, such as the debtor's date of birth, to enable the police to properly identify the debtor and enforce the warrant. An identification for a civil arrest warrant form is available at the Small Claims Court office setting out the information required. It is up to the creditor to provide as much information as is available.

A warrant of committal is issued for the debtor or other person when in contempt of court. A debtor is not committed to jail for the judgment or for failure to pay the judgment debt.

At the contempt hearing, the court may order that the warrant of committal be enforced, or may order the debtor to attend a subsequent examination hearing, or make an order for payment.

A warrant of committal remains in force for a period of twelve months from the date of its issue and may be renewed, prior to expiry, for another twelve months by order of the court. To renew a warrant of committal, the creditor must make a motion to the court before the warrant of committal has expired.

Enforcement of orders of boards, tribunals, agencies or other courts

Where the law permits, the orders of some boards, tribunals and agencies, as well as other levels of court, can be enforced in the Small Claims Court.

Examples of laws that allow orders to be enforced by Small Claims Court include: the *Tenant Protection Act, 1997, Employment Standards Act, Line Fences Act* and *Provincial Offences Act.*

In most cases, a certified copy of the order is required to be filed in Small Claims Court. There is a fee to file orders of boards, tribunals, agencies or other courts for enforcement. The order is then treated, for enforcement purposes, as a judgment of the court in which it is filed. It may then be transferred or any other enforcement procedures may be taken on it.

Restitution orders issued under the *Provincial Offences Act* do not require a filing fee.

14. Instalment payments

If you are a debtor and are unable to pay the full judgment right away and want to make periodic payments, the judge, after hearing the reasons for your inability to pay right away, may direct a schedule of periodic payments. If you receive an opportunity to pay the judgment in periodic payments, you must make sure that you do not fail in making the payments as ordered. If you fail to do so, the judgment will become payable in full and the creditor will be entitled to initiate enforcement proceedings for recovery of the full amount owing.

15. Consolidation order: protection and planned payments for the debtor

The Small Claims Court rules provide for a process (by way of a motion to the court) which can be undertaken by a person who has more than one outstanding Small Claims Court judgment against him or her. A debtor in this situation can apply to the court for a consolidation order which would combine the judgment debts and set up a schedule of repayment for all creditors named in the order. As long as these payments are made, no other measures can be taken against the debtor to collect the debts included in the order except for the filing of a writ of seizure and sale of lands.

If you think a consolidation order would be helpful for you and wish to obtain one, apply to the Small Claims Court division where you live. You will have to file a sworn statement (affidavit (in support of motion)) listing the judgments against you, your debts, your income from all sources and your family support obligations. You will also have to pay a motion fee to the court office.

The court will schedule a hearing. You have to send in a copy of the notice of motion and a copy of your affidavit (in support of motion) to all of your judgment creditors at least seven days before the hearing date. If mailed, the notice must be sent at least 12 days before the date. A judge or referee will hear evidence about your income and expenses. As a result of the hearing, the judge may make an order combining your debts and ordering you to pay in instalments.

A consolidation order terminates immediately if an order for payment of money is obtained against the debtor for a debt incurred after the date of the consolidation order.

A consolidation order terminates immediately if the debtor is in default under the provisions of the order for 21 days.

No further consolidation order shall be made for one year after the consolidation order is terminated.

16. Where can I get more information?

This booklet has been developed to help you understand the basic workings of Small Claims Court. It can help you prepare yourself properly and present your case effectively. However, the booklet is only a brief overview of the structure and rules affecting Small Claims Court. More general information is provided in self-help guides available at any Small Claims Court office.

For more in-depth information, you should obtain a copy of the *Rules of the Small Claims Court*. You may also need to discuss your situation with a lawyer or an experienced agent who understands Small Claims Court proceedings and requirements.

The *Rules of the Small Claims Court* and the *Parental Responsibility Act, 2000* may be purchased through Publications Ontario. To enquire call Publications Ontario at (416) 326-5300 for long distance enquiries call 1(800) 668-9938. The hours of operation are between 8:00 a.m. and 5:00 p.m. Monday to Friday.

The *Rules of the Small Claims Court* are accessible on the E-laws website at:
http://192.75.156.68/DBLaws/Regs/English/980258_e.htm

17. Relevant Rules

RULE 8 SERVICE - Service of particular documents*

Plaintiff's or defendant's claim

8.01 (1) A plaintiff's claim or defendant's claim (Form 7A or 10A) shall be served personally as provided in rule 8.02 or by an alternative to personal service as provided in rule 8.03.

Time for service of claim

(2) A claim shall be served within six months after the date it is issued, but the court may extend the time for service, before or after the six months has elapsed.

Defence

(3) A defence shall be served by the clerk, by mail or by fax.

Use of e-mail

(3.1) The service required by subrule (3) may be made by e-mail in accordance with rule 8.09 if the person on whom the document is served is entitled to use electronic documents in the proceeding under rule 1.06.

Notice of default judgment

(4) A notice of default judgment (Form 11A) shall be served by the clerk, by mail or fax, on all parties named in the claim.

Use of e-mail

(4.1) The service required by subrule (4) may be made by e-mail in accordance with rule 8.09 if the person on whom the document is served is entitled to use electronic documents in the proceeding under rule 1.06.

Non-Application

(4.1.1) Subrules (3.1) and (4.1) do not apply on and after January 1, 2004.

Summons to witness

(5) A summons to witness (Form 18A) shall be served personally by the party who requires the presence of the witness, or by the party's lawyer or agent; at the time of service, attendance money in accordance with the tariff shall be paid or tendered to the witness.

Notice of garnishment

(6) A notice of garnishment (Form 20E) shall be served by the creditor,

(a) on the debtor, by mail, personally as provided in rule 8.02 or by an alternative to personal service as provided in rule 8.03; and

(b) on the garnishee, by mail, personally as provided in rule 8.02 or by an alternative to personal service as provided in rule 8.03.

Notice of judgment debtor examination

(7) A notice of examination of a judgment debtor (Form 20H) may be served by the creditor by mail, personally as provided in rule 8.02 or by an alternative to personal service as provided in rule 8.03.

(8) The notice shall be served at least 30 days before the date fixed for the examination.

Notice of contempt hearing

(9) A notice of a contempt hearing (Form 20I) shall be served by the creditor on the debtor personally as provided in rule 8.02.

Other documents

(10) A document not referred to in subrules (1) to (9) may be served by mail, by fax, personally as provided in rule 8.02 or by an alternative to personal service as provided in rule 8.03, unless the court orders otherwise.

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* Rule 8 current to January 14, 2003.

Use of e-mail

(11) A document not referred to in subrules (1) to (9) may also be served by e-mail in accordance with rule 8.09 if the person serving the document is entitled to use electronic documents in the proceeding under rule 1.06.

Non-Application

(12) Subrule (11) does not apply on and after January 1, 2004.

Personal service

8.02 If a document is to be served personally, service shall be made,

Individual

(a) on an individual, other than a person under disability, by leaving a copy of the document with him or her;

Municipality

(b) on a municipal corporation, by leaving a copy of the document with the chair, mayor, warden or reeve of the municipality, with the clerk or deputy clerk of the municipality or with a lawyer for the municipality;

Corporation

(c) on any other corporation, by leaving a copy of the document with an officer, director or agent of the corporation, or with a person at any place of business of the corporation who appears to be in control or management of the place of business;

Board or commission

(d) on a board or commission, by leaving a copy of the document with a member or officer of the board or commission;

Person outside Ontario carrying on business in Ontario

(e) on a person outside Ontario who carries on business in Ontario, by leaving a copy of the document with anyone carrying on business in Ontario for the person;

Crown in right of Canada

(f) on Her Majesty the Queen in right of Canada, in accordance with subsection 23 (2) of the *Crown Liability and Proceedings Act (Canada)*;

Crown in right of Ontario

(g) on Her Majesty the Queen in right of Ontario, in accordance with section 10 of the *Proceedings Against the Crown Act*;

Absentee

(h) on an absentee, by leaving a copy of the document with the absentee's committee, if one has been appointed or, if not, with the Public Guardian and Trustee;

Minor

(i) on a minor, by leaving a copy of the document with the minor and, if the minor resides with a parent or other person having his or her care or lawful custody, by leaving another copy of the document with the parent or other person;

Mentally incapable person

(j) on a mentally incapable person,

(i) if there is a guardian or an attorney acting under a validated power of attorney for personal care with authority to act in the proceeding, by leaving a copy of the document with the guardian or attorney,

(ii) if there is no guardian or attorney acting under a validated power of attorney for personal care with authority to act in the proceeding but there is an attorney under a power of attorney with authority to act in the proceeding, by leaving a copy of the document with the attorney and leaving an additional copy with the person,

(iii) if there is neither a guardian nor an attorney with authority to act in the proceeding, by leaving a copy of the document bearing the person's name and address with the Public Guardian and Trustee and leaving an additional copy with the person;

Partnership

(k) on a partnership, by leaving a copy of the document with any one or more of the partners or with a person at the principal place of business of the partnership who appears to be in control or management of the place of business; and

Sole proprietorship

(l) on a sole proprietorship, by leaving a copy of the document with the sole proprietor or with a person at the principal place of business of the sole proprietorship who appears to be in control or management of the place of business.

Alternatives to personal service

8.03 (1) If a document is to be served by an alternative to personal service, service shall be made in accordance with subrule (2), (3) or (5); in the case of a plaintiff's claim or defendant's claim, service may also be made in accordance with subrule (7).

At place of residence

(2) If an attempt is made to effect personal service at a person's place of residence and for any reason personal service cannot be effected, the document may be served by,

(a) leaving a copy in a sealed envelope addressed to the person at the place of residence with anyone who appears to be an adult member of the same household; and

(b) on the same day or the following day, mailing another copy of the document to the person at the place of residence.

Corporation

(3) If the head office or principal place of business of a corporation or, in the case of an extra-provincial corporation, the attorney for service in Ontario cannot be found at the last address recorded with the Ministry of Consumer and Commercial Relations [now the Ministry of Government Services], service may be made on the corporation by mailing a copy of the document to the corporation or to the attorney for service in Ontario, as the case may be, at that address.

When effective

(4) Service made under subrule (2) or (3) is effective on the fifth day after the document is mailed.

Acceptance of service by lawyer

(5) Service on a party who is represented by a lawyer may be made by leaving a copy of the document with the lawyer or an employee in the lawyer's office, but service under this subrule is effective only if the lawyer or employee endorses on the document or a copy of it an acceptance of service and the date of the acceptance.

(6) By accepting service the lawyer is deemed to represent to the court that he or she has the client's authority to accept service.

Service of claim by mail to last known address

(7) Service of a plaintiff's claim or defendant's claim may be made by sending a copy of it by mail, in an envelope showing the sender's return address, to the last known address of the person to be served.

(8) Service under subrule (7) is deemed to have been effected on the 20th day after the date of mailing if an affidavit of service (Form 8B),

(a) indicates that the deponent believes the address to which the claim is sent to be the last known address of the person to be served, and states the reasons for the belief;

(b) indicates that the claim has not been returned to the deponent; and

(c) indicates that the deponent has no reason to believe that the person to be served did not receive the claim.

(9) The affidavit of service shall not be completed before the day referred to in subrule (8).

Substituted service

8.04 If it is shown that it is impractical to effect prompt service of a claim personally or by an alternative to personal service, the court may allow substituted service.

Service outside Ontario

8.05 If the defendant is outside Ontario, the court may allow as costs of the action the costs reasonably incurred in effecting service of the claim on the defendant there.

Proof of service

8.06 (1) The following constitute proof of service of a document:

1. If the document was served by a bailiff or bailiff's officer, a certificate of service (Form 8A) endorsed on a copy of the document.

1.1 If the document was served by e-mail, a certificate of service that complies with subrule (2).

2. In all other cases, an affidavit of service (Form 8B) made by the person effecting the service.

Non-Application

(1.1) Paragraph 1.1 of subrule (1) does not apply on and after January 1, 2004.

Certificate of service by e-mail

(2) In a certificate of service by e-mail, the person who served the document shall state that he or she,

(a) served the document by e-mailing a copy in accordance with rule 8.09, and received by e-mail an acceptance of service with the date and time of acceptance;

(b) has sworn an affidavit of service (Form 8C);

(c) will keep the affidavit until the proceeding, including any appeals, is finally disposed of, or until the clerk requests that it be filed, whichever is earlier; and

(d) will file the affidavit forthwith on the clerk's request.

(3) When any person files a requisition (Form 1C) to inspect the affidavit, the clerk shall make a request under clause (2) (d).

Non-Application

(4) Subrules (2) and (3) do not apply on and after January 1, 2004.

Service by mail

8.07 (1) If a document is to be sent by mail under these rules, it shall be sent, by regular lettermail or registered mail, to the last address of the person or of the person's lawyer or agent that is,

(a) on file with the court, if the document is to be served by the clerk;

(b) known to the sender, if the document is to be served by any other person.

When effective

(2) Service of a document by mail is deemed to be effective on the fifth day following the date of mailing.

Exception

(3) Subrule (2) does not apply when a claim is served by mail under subrule 8.03 (7).

Service by fax

8.08 (1) Service of a document by fax is deemed to be effective,

(a) on the day of transmission, if transmission takes place before 5 p.m. on a day that is not a holiday;

(b) on the next day that is not a holiday, in any other case.

(2) A document containing 16 or more pages, including the cover page and the backsheet, may be served by fax only between 5 p.m. and 8 a.m. the following day, unless the party to be served consents in advance.

Service by e-mail

8.09 (1) Service of a document by e-mail may be made by e-mailing a copy as an attachment to an e-mail message that includes,

(a) the sender's name, address, telephone number, fax number and e-mail address;

(b) the date and time of transmission; and

(c) the name and telephone number of a person to contact in the event of transmission problems.

Acceptance

(2) Service under subrule (1) is effective only if the person on whom the document is served provides by e-mail a reply accepting service and showing the date and time of acceptance.

Exception

(3) Subrule (2) does not apply to service by the clerk under any of the following provisions:

1. Subrule 8.01 (3.1) (defence).
2. Subrule 8.01 (4.1) (default judgment).
3. Subrule 9.03 (4.1) (notice of hearing).
4. Subrule 16.01 (1.1) (notice of trial).
5. Subrule 20.09 (11.1) (notice re consolidation order).
6. Clause 20.10 (10) (a) (notice of contempt hearing).

When effective

(4) Service of a document by e-mail is deemed to be effective,

(a) if the time of acceptance shown in the reply is after 5 p.m. and before midnight, on the following day;

(b) in any other case, on the date of acceptance shown in the reply.

Non-Application

(5) Subrules (1) to (4) do not apply on and after January 1, 2004.

Failure to receive document

8.10 A person who has been served or who is deemed to have been served with a document in accordance with these rules is nevertheless entitled to show, on a motion to set aside the consequences of default, on a motion for an extension of time or in support of a request for an adjournment, that the document,

(a) did not come to the person's notice; or

(b) came to the person's notice only at some time later than when it was served or is deemed to have been served.

RULE 3 TIME

Computation

3.01 If these rules or an order of the court prescribe a period of time for the taking of a step in a proceeding, the time shall be counted by excluding the first day and including the last day of the period; if the last day of the period of time falls on a holiday, the period ends on the next day that is not a holiday.

18. What terms and definitions should I know to process Small Claims Court activities?

These are the terms you will hear and use as you prepare for and go to Small Claims Court. Knowing and understanding them can be helpful to you.

ADJOURNMENT	Court approved postponement of a hearing to a future date.
AFFIDAVIT	A written statement or a declaration of facts, sworn or affirmed to be true. Swearing or affirmation takes place before an official having the authority to administer oaths.
CAUSE OF ACTION	The fact or facts which give a person the legal right to begin a lawsuit.
CLAIM	Demand for money or personal property owing to the plaintiff by the defendant.
CLAIM FORM	The form used by the party who is suing or making the claim to start the action.
CLAIMANT OR PLAINTIFF	Party who is suing or making the claim.
CLERK	The court official to whom certain powers and duties are given by law. These powers and duties may be exercised or performed by one or more staff in the court office.

CREDITOR	Party who is entitled to enforce an order/judgment for the payment or recovery of money or property owed.
CONSOLIDATION ORDER	An order permitting a debtor against whom there is more than one Small Claims Court judgment to combine the judgments under one order which can be paid by instalments.
DEBTOR	Party against whom an order for the payment or recovery of money may be enforced.
DEFAULT JUDGMENT	A document signed by a clerk for relief claimed against a defendant who has not (1) replied to a claim, (2) disputed a claim, or who has (3) failed to maintain offered payments.
DEFENCE	A dispute or reply to the claim (in Small Claims Court, it may also mean a request for time to pay the debt).
DEFENCE FORM	The form used by the party who is being sued to dispute or reply to a claim.
DEFENDANT	Party who is being sued (the one the claim is made against).
ENFORCEMENT	The process available for the creditor to help in the collection of money or property owed to the creditor. For example, writ of seizure and sale of lands or personal property, garnishment and notice of examination.
GARNISHEE	Party named in the notice of garnishment, which the creditor believes owes a debt to the debtor e.g. bank, employer or company who owes the debtor money.
GARNISHMENT	The procedure by which a creditor can collect on a judgment or order by claiming money owed to the debtor by a third party. For example, the creditor can get a direction requiring the debtor's employer or bank to pay money owed to the debtor, directly to the court.
HEARSAY	A statement or document made by someone who is not in court.
ISSUE	The clerk dates and signs completed documents.
JUDGMENT	A decision made by a judge resolving a dispute. Generally the decision is documented.
LIQUIDATED	A specific dollar amount such as e.g. invoice, cheque, fixed debt.
LITIGATION GUARDIAN	A person who acts on behalf of a minor or a mentally incompetent person in a lawsuit. Where the plaintiff or defendant is a minor, the litigation guardian will normally be a parent. However, the litigation guardian must have no interest in the lawsuit that conflicts with the interest of the person he or she represents.
NOTICE OF MOTION	Written notice by one party to the other party in a lawsuit about an intention to argue a particular issue before a judge.
MOTION	A process used to make a request to a judge for an order.
NOTICE OF TRIAL OR PRE-TRIAL	A formal notice issued by the court to all parties in a claim stating the date, time and place of trial or pre-trial.
ORDER	A document or written decision made by a judge, that may be enforced by the court.
ORDER OF DISPOSITION	A form prescribed under the *Young Offenders Act* and issued by the Youth Court which confirms the disposition imposed on a child under 18 years of age who has been found guilty of an offence involving property damage, loss or destruction. This order may only be used where a claim is being made against a parent under the *Parental Responsibility Act, 2000*, for the property damage, loss or destruction.

PARTY	Any individual, corporation, unincorporated organization, sole proprietorship or partnership named as a plaintiff or a defendant in a Small Claims Court action.
PLAINTIFF	The person who brings a claim against another person, company or organization.
PRE-TRIAL CONFERENCE	An informal hearing held before a judge or designated court official, to attempt to settle the dispute before the actual trial.
REFEREE	Court official who may hear pre-trial hearings. In many cases, he/she assists in working out a scheme of debtor's payments to the creditor and may assist in the obtaining of consolidation orders.
RESERVE JUDGMENT	To postpone a decision until all facts have been fully considered or a point of law reviewed.
SEIZE, SEIZURE	To take legal possession of property; the act of doing so.
SENTENCE ORDER	A form prepared under the *Youth Criminal Justice Act (Canada)* and issued by the Youth Justice Court which confirms the sentence imposed on a child under 18 years of age who has been found guilty of an offence involving property damage, loss or destruction. This order may only be used where a claim is being made against a parent under the *Parental Responsibility Act, 2000*, for the property damage, loss or destruction.
SERVE, SERVICE	To deliver a legal document to a person: the act of doing so either by mail, in person, or as authorized by *Rules of the Small Claims Court* or by court order.
SET OFF	A debt the plaintiff owes the defendant which may be deducted from the amount the court finds the plaintiff is owed.
SUMMONS TO WITNESS	A legal document from the court requiring a witness to appear in court at a specific time.
UNLIQUIDATED	A nonspecific dollar amount which requires some form of proof to permit a judge to come to a decision, e.g. repair of motor vehicle.
WRIT	Written instructions to a court officer to enforce a court order.

FOR INFORMATION ON ACCESS TO ONTARIO COURTS

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